IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 300 OF 2004
IN
FIRST APPEAL NO. 253 OF 2004

Shri Jermen D'Mello,
of full age, married,
Indian national, residing at
Santar Bhat, Divar, Ilhas, Goa
Or 'Shelters Enclave',
AS-2, Odlem Bhat, Taleigao,
Ilhas, Goa. ... Applicant

versus

1. Shri Eusebio D'Souza,
of full age, residing at
Balbot, Bastora, Bardez,
Goa.

2. Sahakar Housing Cooperative
Society Limited, a Society registered
under Maharashtra Cooperative Societies
Act, 1960, as made applicable to Goa,
under No.60/15/83/TB, having site
office at the suit property surveyed
under survey no.87/1 of Village Colvale,
situated Opposite Binani Fibre Glass
Ltd. factory, Colvale, Bardez, Goa, and
through its present Chairman.

3. Shri Lavoo Rama Kambli,
son of late Rama Mahadev Kambli,
of full age, residing at Koni Waddo,
Colvale, Goa. ... Respondents.

Mr. S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, Advocate for the Applicant.

Mr. P. A. Kholkar, Advocate for Respondent No.1.

Mr. Sudin Usgaonkar, Advocate for Respondent No.2.

CORAM : A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE : 23RD FEBRUARY,2005.

ORAL ORDER(PER N. A. BRITTO, J.)

Heard Mr. S. G. Dessai, the learned Senior Counsel on behalf of the applicant and Mr. Sudin Usgaonkar, the learned Counsel on behalf of respondent No.2.

2. By application under consideration the applicant seeks a temporary injunction, during the pendency of the appeal, to restrain respondent no.2 from carrying out any development works or any construction in the suit property or creating any third party rights in respect of the same.

3. The applicant was the plaintiff in S.C.S. No.63/95/C and respondent no.2 was the defendant no.2 in the said Civil Suit. The suit property surveyed under no.87/1 of Colvale Village and admeasuring 56,875 sq. meters belonged to Teotonio Menezes. The said Teotonio Menezes on or about 10-3-1987 executed a Power of Attorney in favour of defendant/respondent no.1. Subsequently on or about 2-9-1988 pursuant to the said Power of Attorney the said defendant/respondent no.1 sold the suit property to respondent no.2 for a sum of Rs.5.5 lakhs. Later the said Teotonio Menezes on or about 7-2-1990 by Will bequethed the suit property to the applicant and the applicant claims that he came to know about sale of the property in June, 1992 and on or about 29-5-1995 the applicant filed the S.C.S. No.63/95/C which came to be dismissed by the learned Civil Judge, Senior Division, Mapusa on 30-1-2003. The learned Civil Judge, Senior Division has held that the said Teotonio Menezes had sold the suit property to defendant no.2 by a valid Sale Deed dated 2-9-1988 and, therefore, the said Teotonio Menezes could not have subsequently bequethed the said property by a Will in favour of the applicant when it was already sold by him. It also appears that Mrs. Indira, the daughter of the said Teotonio Menezes subsequently gave her consent in writing to the said Sale Deed.

4. The applicant during the pendency of the said Civil Suit had filed an application for temporary injunction which was dismissed by the learned Civil Judge, Senior Division and the applicant did not take any further steps as regards the same.

5. Mr. Dessai, the learned Senior Counsel has fairly conceded that the applicant is not in a position to give any security in case any injunction is granted in his favour during the pendency of the appeal. It is his submission that the appeal be expedited.

6. Considering the background of this case, we are not inclined to grant any injunction in favour of the applicant who had failed to obtain an injunction in his favour from the trial Court and since then there has been no injunction operating in favour of the applicant from the year 1995 till his suit was dismissed on 30-1-2003 and till even today. There is a prima facie finding in favour of the respondents and being so at this belated stage the applicant cannot be given an injunction in his favour to restrain the respondents from carrying out the works of construction in the suit property which according to the applicant has commenced after the dismissal of the said Civil Suit. Nevertheless, we make it clear that any development works in the suit property to be done by the respondents would be subject to the result of this appeal. The applicant is at liberty to apply for early hearing of

the present appeal.

7. We find there is no merit in this application and with the above observations we proceed to dismiss the application.

A. P. LAVANDE, J.

N. A. BRITTO, J.

RD.